IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID IGASAKI Plaintiff,	)	
v.	)	Case No. 15-C-3693 Honorable Judge Andrea R. Wood
ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATIONS and LAURA FORESTER, an individual and as Chief of Medical Prosecution at the IDFPR Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

NOW COMES Defendant, the ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION ("IDFPR"), by its attorney LISA MADIGAN, Attorney General of the State of Illinois, and for its Memorandum of Law in Support of Defendant's Motion for Partial Judgment on the Pleadings states as follows:

INTRODUCTION

Plaintiff David Igasaki brings this action against IDFPR alleging that Plaintiff was subjected to discrimination and retaliation during his employment at IDFPR.[1] [*See generally*, Doc. 39]. Specifically, Plaintiff claims that he was subjected to a hostile work environment and was eventually terminated due to several different factors.

Plaintiff frames his claims against IDFPR as follows:

- Count I: race discrimination under Title VII;

[1] The facts contained in this motion are derived from the allegations set forth in Plaintiff's First Amended Complaint as required under Rule 12(b)(6). *Reger Dev., LLC v. Nat'l City Bank*, 592 F.3d 759, 763 (7th Cir. 2010). Defendant neither admits nor denies Plaintiff's factual assertions at this time and incorporates Plaintiff's facts in this memorandum solely for the purpose of Defendant's Motion for Partial Judgment on the Pleadings.

- Count II: sex discrimination under Title VII;
- Count III: age discrimination under the Age Discrimination in Employment Act ("ADEA");
- Count IV: retaliation under Title VII; and
- Count V: disability discrimination under the Americans with Disabilities Act ("ADA").

[Doc. 39 at ¶¶ 51-85]. Defendant has answered each of the Plaintiff's claims, [Doc. 42] and now moves for judgment in its favor on Count II (Plaintiff's sex discrimination claim) of Plaintiff's First Amended Complaint under Federal Rule of Civil Procedure 12(c).

LEGAL STANDARD

"A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is governed by the same standards as a motion to dismiss for failure to state a claim under Rule 12(b)(6)." *Adams v. City of Indianapolis*, 742 F.3d 720, 727–28 (7th Cir. 2014). Under Rule 12(b)(6), the question presented is whether the plaintiff has alleged facts sufficient to state a legally cognizable claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face and also must state sufficient facts to raise [his] right to relief above the speculative level." *Bissessur v. Ind. Univ. Bd. of Trs.*, 581 F.3d 599, 602 (7th Cir. 2009) (*quoting Iqbal*, 556 U.S. at 678). To satisfy the plausibility standard, a plaintiff must plead specific facts to support the legal claims asserted in the complaint. *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011) (*citing Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009)). In other words, the plaintiff must plead facts sufficient to "'raise a reasonable expectation that discovery will reveal evidence' supporting the plaintiff's allegations." *Brooks*, 578 F.3d at 581 (*quoting Bell Atlantic Corp.*, 550 U.S. at 556).

ARGUMENT

PLAINTIFF CANNOT BRING A TITLE VII SEX DISCRIMINATION CLAIM BASED ON HIS SEXUAL ORIENTATION.

Plaintiff's sexual orientation is not a protected class under Title VII; therefore the sex discrimination claim (Count II) should be dismissed. While Title VII expressly prohibits employers from discriminating against employees "because of [their] sex," the Seventh Circuit has held that "Congress intended the term 'sex' to mean 'biological male or biological female,' and not one's sexuality or sexual orientation." *Hamner v. St. Vincent Hosp. and Health Care Center, Inc.*, 224 F.3d 701, 704 (7th Cir. 2000) (*citing Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081, 1085 (7th Cir. 1984)). Thus, "harassment based solely upon a person's sexual preference or orientation ... is not an unlawful employment practice under Title VII." *Id.* "Title VII does not allow Plaintiff to recover for purported harassment based on his sexual orientation." *Williams v. City of Chicago Bd. of Educ.*, 2012 WL 3023313, *8 (N.D. Ill. 2012) (*citing Spearman v. Ford Motor Co.*, 231 F.3d 1080, 1084 (7th Cir. 2000)).

While Title VII does not outlaw discrimination based on sexual orientation, sex stereotyping can be evidence of discrimination "because of" sex. *See, e.g., Price Waterhouse v. Hopkins,* 490 U.S. 228, 250-52 (1989) (recognizing sex stereotyping as evidence of sex discrimination); *Spearman v. Ford Motor Co.,* 231 F.3d 1080, 1085 (7th Cir. 2000). In evaluating such claims, courts "consider any sexually explicit language or stereotypical statements within the context of all of the evidence of harassment in the case [to] determine whether the evidence as a whole creates a reasonable inference that the plaintiff was discriminated against because of his sex." *Hamm v. Weyauwega Milk Products, Inc.*, 332 F.3d 1058, 1062 (7th Cir. 2003). However, a Plaintiff cannot show sex discrimination through alleged sex stereotyping if "his litany of complaints about the actions of his coworkers inescapably relate to either [the plaintiff's] coworkers' disapproval of his work performance or their perceptions of [the plaintiff's] sexual orientation." *Id.*

Though Plaintiff labels his claim as one of sex discrimination, it is readily apparent from his First Amended Complaint that he believes that the alleged discrimination and harassment is not based on his sex (i.e., male) but on his sexual orientation. Although Plaintiff states in a conclusory manner that he is part of a protected class and that he was discriminated against based on his sex, the facts in his First Amended Complaint establish that the alleged harassing behavior began after his Supervisor, Laura Forester ("Forester"), allegedly found out that Plaintiff "was a man associated with a man in a romantic relationship." [Doc. 39 at ¶ 13 ("In the year following the February 2011 Review, Forester developed a close relationship with Vladimir Lavosky ("Lovosky") another staff attorney in the Unit. Lovosky was the only other person in the Unit who knew Plaintiff was a man associated with a man in a romantic relationship.")]. Clearly, Plaintiff's sex would have been known at all times, including when Plaintiff received the first "good" performance review from Forester. [*See* Doc. 39 at ¶ 12]. The allegation that harassment and/or discrimination began only after Forester supposedly learned that Plaintiff formed relationships with other men shows that Plaintiff is actually claiming that his sexual orientation, not his sex, was the impetus for Forester's alleged actions.

While Plaintiff's First Amended Complaint attempts to word his claim differently than in his previous two Complaints to shoehorn it into one of sex stereotyping, the crux of his claim is clearly that he was discriminated against due to his sexual orientation. Instead of stating that he was discriminated against because he is homosexual, Plaintiff newest wording is that he was discriminated against because he "forms relationships with other males." [Doc. 39 at ¶ 57]. This is clearly a distinction without a difference which does not transform his invalid claim of sexual orientation discrimination into a valid claim of sex discrimination. Additionally, there are no allegations which show Forester's actions had anything to do with her alleged knowledge of his romantic relationships or his "soft spoken" nature.

Comparing Plaintiff's allegations here to the conduct complained of in cases which courts have found a valid sex stereotyping claim shows that Plaintiff's claim is lacking. *Hamm*, 332 F.3d at 1064-1065 (summarizing relevant sex stereotype cases within the Seventh Circuit). Plaintiff does not allege *any* statements by *anyone* at IDFPR that reference his sex, sexual orientation, or anything that might be construed as sex discrimination. [*See generally,* Doc. 39]. In *Spearman*, the plaintiff "claimed that vulgar and sexually explicit insults directed at him and graffiti posted by his coworkers were motivated by sexual stereotyping, arguing that his coworkers perceived him to be too feminine to fit the masculine image at Ford." *Hamm*, 332 F.3d at 1065. No such language is even alleged here, and Plaintiff has not done anything but state, in a conclusory manner, that he was discriminated against based on his sex. This falls far short of the evidence presented in other sex discrimination cases to attempt to establish discrimination. *See id*. ("[Spearman] alleged that a coworker called him a 'little bitch,' and stated that he hated Spearman's 'gay ass,' that workplace graffiti linked him with AIDS and labeled him as gay, and that he was assigned duties that he believed should be reserved for women."). The Court rejected Spearman's claim that he was discriminated against because of his sex, holding that the evidence had "clearly demonstrate[d] that Spearman's problems resulted from his altercations with coworkers over work issues and because of his apparent homosexuality." *Spearman*, 231 F.3d at 1085.

Here, Plaintiff merely speculates that Forester took action against him because Plaintiff "does not conform to male stereotypes as he is slight, soft spoken and forms relationships with other males." [Doc. 39 at ¶ 57]. The First Amended Complaint lacks any facts to connect Forester's alleged actions to Plaintiff's actual sex. Plaintiff is clearly attempting to circumvent the fact that sexual orientation is not a protected class under Title VII. Because Plaintiff's sex discrimination claim is in reality based on his sexual orientation and not his sex or sex stereotyping, and because Title VII does not protect employees based on their sexual orientation, Plaintiff's sex discrimination claim (Count II) should be dismissed.

WHEREFORE, for the reasons set forth above, Defendant respectfully requests that this Court grant judgment in Defendant's favor on Plaintiff's sex discrimination claim (Count II), as well as any further relief the Court deems just and necessary.

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Respectfully submitted,

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